

TAX BRIEFING: Monthly Insight

Recent Developments in Tax Legislation

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A. Law 4548/2018 Amends the Definition of Bond Loans and POL. 1131/2018 Provides Clarifications on Tax Exemptions

1. By way of Law 4548/2018 (Article 59 par. 1), the Greek parliament amended the codified law for Sociétés Anonymes (SAs). The new legislation will be effective as of 1 January 2019 and reforms the legal provisions on bonds abolishing Articles 1-9 and 12 (with the exception of Article 2 par. 4) of Law 3156/2003.
2. In accordance with the new provisions, an SA may issue single-note bond loans, subscriptions to bond loans can only be made by one person and all bonds may be held by one bondholder.
3. Following the enactment of Law 4548/2018 and Opinion no. 43/2018 of the Legal Council of State, the Independent Authority of Public Revenues issued POL. 1131/2018 providing clarifications on the tax exemptions relating to bond loans.
4. In particular, tax exemptions apply to the following cases:
 - a. Bond loans where all bonds are held by only one bondholder.
 - b. Bond loans where the majority of the bonds are held by a legal person and the minority by another legal person.
 - c. Bond loans where the bondholders are affiliate legal entities of the issuer as defined by the Greek Accounting Principles (Law 4308/2014) or Article 42e of Codified Law 2190/1920 or Article 2 of Law 4172/2013.
 - d. Bonds initially held by one or two bondholders and transferred at a later stage to numerous bondholders.

The Council of the State opined that the tax exemptions do not apply to single-note bond loans. It should also be noted that the new legislation on SAs provides that the issuance of a single-note bond loan does qualify as a bond loan.

B. Law 4549/2018 Introduces Changes to Corporate, Individual and Real Estate Taxation and VAT

1. On 14 June 2018, the Greek parliament enacted Law 4549/2018 introducing numerous changes to tax legislation.
2. Some of the major amendments to corporate tax provisions follow:
 - a. In accordance with the previous provisions of Article 27 par. 5 of Law 4172/2013 (Income Tax Code - ITC), tax losses could not be carried forward where the direct or indirect ownership of a Greek company's capital or voting rights changed within one tax year by more than 33%, unless the company evidenced that the change of ownership took place for business purposes. Under the new provisions, the restriction with regard to the transfer of tax losses applies where the ownership of a Greek company's capital or voting rights changes within a tax year by more than 33% and the company's activities change by more than 50% of its turnover within the same or the following tax year. The right of the company to provide evidence that the change of ownership took place for business purposes is not specifically referred to in the new legislation and therefore seems to be abolished.
 - b. The new legislation amends the definition of non-cooperative jurisdictions provided for in Article 65 of the ITC. Pursuant to the new provisions, non-EU Member States which have not been rated by the OECD as "largely compliant" and:
 - i. have not concluded and do not apply any agreement for administrative assistance in tax issues with Greece or have not signed the Convention between the OECD and the Council of Europe on Mutual

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Administrative Assistance in Tax Matters; and

ii. have not committed to exchange of financial information by the 2018 tax year at the latest, are considered non-cooperative jurisdictions.

As stated in the preliminary report of the new law, the definition of non-cooperative countries had to be amended in order for it to be aligned with the compliance criteria on tax transparency included in Annex V of the ECOFIN Conclusion of 5 December 2017 (15429/17) FISC 345 ECOFIN 1088, pertaining to the EU list of non-cooperative jurisdictions.

- c. Foreign tax credit rules regarding dividends received by Greek legal entities from other EU legal entities that do not qualify for the participation exemption have been amended. The new provisions stipulate that such Greek legal entities are entitled to tax credit on the amount of the corresponding income tax pertaining to the distributed profits and not to the income tax paid, as stated in the revised provision.
 - d. The revised provision of Article 21 of the ITC stipulates that taxable profits are determined on the basis of the accounting profits reflected in the P&L account as drafted in accordance with the Greek Accounting Standards. Legal entities drafting their financial statements based on the IFRS are not affected by the new provision.
 - e. The new law amends the tax depreciation rules effective from the 2018 tax year for transportation means except aircrafts, vessels, boats and railway trains.
 - f. The definition of "finance leasing" in the ITC is aligned with the Greek Accounting Standards aiming to address practical issues related to the accounting and tax treatment of leasing agreements.
 - g. Tax incentives are provided for the employment of persons under 30 years old and the long-term unemployed. The new provision also applies in the case of conversion of part-time or rotating employment to full employment. In accordance with the new provisions, legal entities are entitled, under certain conditions, to deduct an additional 50% of the social security contribution on top of the ordinary deductible amount.
 - h. Increased depreciation rates are provided for water-saving investments.
 - i. Under certain conditions, tax incentives are provided for audiovisual works.
3. Some of the major amendments to individual tax provisions follow:
 - a. The amended provision of the ITC (Article 4 par. 1) stipulates that an individual is considered to be a tax resident of Greece in the event that, among other requirements, the center of their vital interests is in Greece. Under the new definition, the place of residence is determined by taking into account all the individual's ties (personal, employment, property, social interests) to Greece.
 - b. Payments for investment insurance policies are considered capital expenditure and should be reported by individuals in their annual income tax return and source of funds must be justified.
 - c. The new law revises Article 21 of the ITC with regard to the concept of "business transaction", in accordance with which the following are not treated as business transactions:
 - i. One-off capital transactions (securities or real estate property).
 - ii. The sale of assets held for more than 5 years.
 - iii. The sale of assets acquired by way of inheritance or gift from up to second-degree relatives.Any other transaction may be treated as business income subject to taxation at a maximum rate of 45%.
 - d. In accordance with the previous legislation, only inheritance or gift tax paid was considered as the acquisition cost for securities in the case of inheritance or gifts. As a result, capital gains from the sale of securities were increased since the acquisition cost was usually quite low. Under the revised provisions, the taxable value of the securities at the time of inheritance or gift will be considered as the acquisition cost.
 4. New statutory values are introduced to the Annual Real Estate Tax (ENΦIA) applicable as of 1 January 2018. The changes impact both the basic and supplementary ENΦIA.
 - a. In particular, the amended provisions stipulate that the new price zones introduced by Ministerial Circular POL. 1113/2018 will apply as of 1 January 2019, except in the case of ENΦIA, where they will apply as of 1 January 2018.
 - b. The supplementary tax-free threshold has been increased to €250,000 (as opposed to €200,000 under the old provisions).
 - c. The brackets for the basic tax have been amended, resulting in changes to the basic tax.
 - d. The payment of ENΦIA will take place in monthly installments, with the last one at the end of January. For 2018, the first installment will be due at the end of September.
 5. The new law amended Article 19 par. 2 of Law 2859/2000, introducing Article 80 of VAT Directive 2006/112, which provided for adjustments to the VAT basis in transactions between affiliate legal entities.

In particular, in the case of supply of goods or services between affiliates, the taxable amount is to be the open market value:

- a. where the consideration is lower than the open market value and the recipient of the supply does not have a full right of deduction;
- b. where the consideration is lower than the open market value and the supplier does not have a full right of deduction and the supply is subject to an exemption; and
- c. where the consideration is higher than the open market value and the supplier does not have a full right of deduction.

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